

Execution Version

1 FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE
2 ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND
3 LOCAL REDEVELOPMENT AUTHORITY (LRA)/ECONOMIC DEVELOPMENT
4 CONVEYANCE AGREEMENT (EDC AGREEMENT)
5 SUCCESSOR IMPLEMENTING AGREEMENT
6

7 RECITALS.
8

9 WHEREAS, the Fort Ord Reuse Authority ("FORA") is a regional agency and a
10 Corporation of the State of California established under California State Law Government
11 Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort
12 Ord property and is acknowledged as the federally recognized local reuse authority for
13 property transfers from the Army, to the governing local jurisdictions or their designees.
14

15 WHEREAS, the City of Seaside, California ("Seaside"), is a general law Municipal
16 Corporation of the State of California.
17

18 WHEREAS, FORA and Seaside are each a "Party", and together the "Parties" to
19 this Agreement.
20

21 WHEREAS, Fort Ord, California was placed on the National Priorities List
22 (Superfund) in 1990 due to leaking underground storage tanks, contaminated
23 groundwater and a 150-acre landfill.
24

25 WHEREAS, in 1990, the Army executed a Federal Facility Agreement ("FFA")
26 under CERCLA Section 120 outlining the Army's Comprehensive Environmental
27 Response, Compensation, and Liability Act ("CERCLA") clean up responsibilities with
28 respect to the former Fort Ord. The Army remains responsible for certain actions under
29 that FFA. The FFA was amended on or about July 26, 2007, the effect of which
30 suspends the FFA for FORA's ESCA obligations so long as FORA or its successors are
31 in compliance with the AOC.
32

33 WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to
34 and in accordance with the Defense Base Closure and Realignment Act of 1990, as
35 amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").
36

37 WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as
38 amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L.
39 No. 106-65 (1999), and the implementing regulations of the Department of Defense (32
40 CFR Parts 90 and 91), FORA executed an economic development conveyance
41 agreement and acquired portions of the former Fort Ord consisting of approximately five
42 thousand two hundred (5,200) acres of land, including all buildings, personal property,
43 appurtenances, rights-of-way, and drainage areas upon and subject to the terms and
44 conditions of a June 23, 2000 Memorandum of Agreement with the United States of
45 America ("EDC Agreement").
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1 **WHEREAS**, the EDC Agreement provided for transfers of property in accordance
2 with the Army's clean-up schedule. Subsequent to the EDC Agreement execution, FORA
3 and the local communities decided to pursue an early transfer process pursuant to Title 42
4 United States Code, section 9620(h)(3)(C) in order to expedite the property transfers and
5 ultimate reuse and economic recovery for the communities affected by the Fort Ord
6 closure.

7
8 **WHEREAS**, in furtherance of the early transfer process, the Army, with the
9 approval of the EPA Administrator and the concurrence of the Governor of California,
10 transferred title of 3,337 acres of munitions impacted Fort Ord property by quitclaim deed
11 to FORA before all action to protect human health and the environment had been
12 completed. Concurrent with this transfer without the otherwise required CERCLA
13 covenant mandated by Title 42 United States Code, section 9620 (h)(3), FORA accepted
14 title and agreed to perform the Army's environmental remediation with funding from the
15 Army. Excluded from FORA's performance obligation are matters related to the
16 groundwater at the former Fort Ord, as well as other Army responsibilities enumerated in
17 the ESCA and elsewhere.

18
19 **WHEREAS**, in 2007 an "*Administrative Order on Consent ("AOC")* [Docket No. R9-
20 2007-003] [was] *entered into voluntarily by the United States Environmental Protection*
21 *Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), and*
22 *the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of*
23 *potential removal actions, one or more remedial investigations and feasibility studies*
24 *("RI/FS") and one or more remedial designs and remedial actions ("RD/RA") for*
25 *contaminants present on portions of the former Fort Ord located at Monterey, California*
26 *("Site") and the reimbursement for future response costs incurred by EPA and DTSC in*
27 *connection with such CERCLA response actions."*

28
29 **WHEREAS**, in 2007 the Army executed an amendment to the Federal Facilities
30 Agreement.

31
32 **WHEREAS**, in 2007 the Army and FORA executed an Environmental Services
33 Cooperative Agreement W9128F 07 2-0162 ("ESCA") under the authority of Title 10 United
34 States Code, Section 2701(d) - Environmental Restoration Program (10 U.S.C. 2701)
35 whereby FORA would perform the Army's environmental responsibilities as the Army
36 Response Action Contractor pursuant to Title 42 United States Code, section 9619, with
37 the Army providing funding to perform these services.

38
39 **WHEREAS**, the ESCA has been amended several times, the ESCA Mod 9
40 amendment in 2017 which provided approximately \$6.8 million for Regulatory Oversight
41 Through 31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC
42 remedial-completion documentation, property transfer process through 30 June 2020 and
43 to perform the required long-term land management tasks, including Munitions and
44 Explosives of Concern ("MEC") Find Assessments, inspections, enforcement, monitoring
45 and reporting through June 30, 2028.

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ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 02 – Department of Toxic Substance Control (DTSC) and United States EPA Technical Oversight Services	31 Dec. 2019	\$745,913
	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	\$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		Totals	\$6,846,204

2

3 **WHEREAS**, due to changes and delays in the transfer of properties, modifications
 4 were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN
 5 0004 Post Closure MEC Find Assessments \$528,651 and ESCA CLIN 0005 for Long-
 6 Term Management and Land Use Control (LUC) management are \$3,705,792 (Totaling
 7 \$4,234,443 available from June 30, 2020 through June 30, 2028):

8

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		Totals	\$4,234,443

9

10 **WHEREAS**, in 2018 FORA adopted a Transition Plan as required by State Law
 11 that specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the
 12 ESCA contract.

13

14 **WHEREAS**, the Successor assumes responsibility and will be tasked with
 15 performing the remaining LTOs under the ESCA, including the recent amendment. It is
 16 assumed that all work under the previous \$98,000,000 contract will have been
 17 accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action
 18 Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army
 19 Administrative Record located at: [http://fortordcleanup.com/documents/administrative-
 20 record/](http://fortordcleanup.com/documents/administrative-record/).

21

22 **WHEREAS**, the City of Seaside is prepared, subject to funding, to assume ESCA
 23 responsibility and attendant local reuse authority status, including the execution of the
 24 AOC in order to complete the ESCA obligations and any property-related transfer actions
 25 required after June 30, 2020.

26

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1 **NOW, THEREFORE**, the Parties agree as follows:

2
3 1. Incorporation of Recitals. The above recitals are hereby incorporated herein by
4 reference.

5
6 2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA
7 Successor-In-Interest under the 2018 Transition Plan, and nominate Seaside to the
8 Department of Defense as the LRA Successor.

9
10 3. Insurance Policies. FORA will request the transfer of its two pollution legal
11 liability insurance policies and limits to Seaside. FORA shall also transfer any self-insured
12 retention funds to Seaside to be used exclusively for ESCA and claims-related obligations.
13 Seaside acknowledges that these insurance policies will expire in 2022 and 2024,
14 respectively, and that Seaside's designation will be subject to approval by the insurers.
15 Seaside's successful designation through December 31, 2024 is a condition precedent to
16 becoming FORA's ESCA successor. Pollution legal liability insurance will be required by
17 the ESCA from 1 January 2025 through no earlier than 30 June 2028, a requirement to be
18 funded by the Army.

19
20 4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA
21 agrees to provide technical and/or financial assistance to Seaside to meet the terms
22 required by the Army, EPA, and DTSC that the Successor be a single entity and
23 demonstrate technical and financial competence to complete the work.

24
25 5. ESCA records and contracts funds. FORA and Seaside shall establish a
26 mechanism for transfer of all ESCA records, back-up documents, computer files and
27 accounting records, and contract funds to Seaside for meeting FORA's ESCA obligations.

28
29 6. Technical Assistance. FORA agrees to request the Army extend the funding
30 expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find
31 Assessments and Long Term/LUCs Management) for Seaside to provide technical
32 assistance and funding to complete the ESCA transfer process through June 30, 2020,
33 including specialized legal, drafting and other staff or contract support. FORA agrees to
34 establish and fund a pool of monies to support Seaside's assumption of responsibilities
35 and obligations of the EDC Agreement.

36
37 7. Obligations. FORA agrees to nominate and Seaside agrees to assume the
38 Federal local redevelopment authority "LRA" designation and the remaining reporting,
39 monitoring, and stewardship or other identified responsibilities associated with (i) the
40 FORA-Army 2007 ESCA, as FORA's Successor through the end of the ESCA Contract
41 June 30, 2028 in order to complete property transfers and the ESCA to the extent that
42 ESCA performance does not obligate or put at risk Seaside's municipal non-ESCA funds,
43 and (ii) the EDC Agreement, as FORA's successor. Exhaustion or unavailability of ESCA
44 funds with which to compensate Seaside for the performance of ESCA obligations will
45 constitute a force majeure under the ESCA and the AOC, thereby relieving Seaside of its
46 responsibility to perform FORA's surviving ESCA obligations.

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1 8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside
2 agrees to provide evidence of its fiduciary and technical capability to comply with the
3 terms of the ESCA and manage the contract financial assets with associated invoicing
4 and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA
5 fiduciary capability.

6
7 Seaside agrees to assume FORA's ESCA Long Term Obligations Management
8 Program, as approved by the US Army, EPA and DTSC, and:

- 9
10 i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required under
11 the contract provisions as currently amended through 2028, but with allowances
12 for indirect administrative overhead to assure the Army, EPA and DTSC of
13 continued ESCA technical capacity.
14
15 ii. ESCA Long-Term Obligation Support Services Contract. Enter into Support
16 Services Contracts through 2028 with specialists Arcadis, Weston Solutions,
17 Inc. and Westcliffe Engineers, Inc. (or other qualified vendors), including
18 allowances for indirect administrative overhead to assure the Army, EPA and
19 DTSC of continued ESCA technical capacity.
20
21 iii. Representation. Contract with Counsel reasonably qualified on environmental
22 issues with experience in working with state and federal entities (Army, EPA
23 and DTSC) for review and compliance as noted in the ESCA and the AOC.
24
25 iv. No Obligation of Other Entities. Monterey Peninsula Community College
26 District, the Board of Trustees of the California State University (on behalf of the
27 Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks,
28 Marina and Monterey, the Marina Coast Water District (hereinafter collectively
29 "Grantees"), will not be a party to the ESCA, and will not bear any financial
30 liability as a result of the ESCA.
31

32 9. Coordination with other Entities. Seaside agrees to enter into agreements with
33 the Grantees for the property transfers and other necessary property-related rights to
34 effectuate the reuse and the oversight, reporting, response, and other long-term
35 stewardship obligations listed in and consistent with (a) the ESCA through 2028 on behalf
36 of the Army, and (b) the EDC Agreement.

- 37
38 i. Water Rights Allocations. Until such time as such allocations may be amended
39 by agreements, Seaside agrees to honor and abide by the water rights'
40 allocations set forth in Exhibit A attached hereto, for Government Water Rights
41 as defined in Subsection 5.02 of the EDC Agreement, that may be released by
42 the Government in the future, subject to compliance with all applicable laws.
43
44 ii. Wastewater Discharge Rights. Until such time as such allocations may be
45 amended by future agreements, Seaside agrees to establish and apply, in
46 consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a
47 fair process to ensure that all Grantees will enjoy equitable utilization of

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1 Wastewater Discharge Rights that may be released by the Government in the
2 future, subject to compliance with all applicable laws.
3

4 iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's
5 designation as the local redevelopment authority or as FORA's successor under
6 the ESCA or EDC Agreement creates in Seaside any land-use decision-making
7 authority with respect to any land not within Seaside's City limits. Further,
8 Seaside shall not require that any land-use decisions of other entities be in
9 compliance with the Fort Ord Base Reuse Plan.
10

11 iv. Seaside shall not require payment of any sale or lease proceeds or revenues
12 (or the equivalent use of property such as licenses, permits, concession
13 agreements etc.), from other entities for the transfer of property, water rights, or
14 wastewater discharge rights received from the Army pursuant to the EDC
15 Agreement.
16

17 10. ESCA Amendment. The parties agree to work cooperatively to successfully
18 receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor
19 and execute the ESCA upon review and approval of terms and conditions. Seaside
20 agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army
21 Corps of Engineers ("USACE") oversight and grant management requirements for funding
22 to Seaside under the ESCA terms, provided however, that the Successor activities are
23 fully funded, including without limitation provision for PLL insurance coverage, funding
24 shall be provided from January 1, 2024 through June 30, 2028 or the completion of the
25 ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a
26 reimbursement funded by the Army through the end of the ESCA obligations.
27

28 11. Administrative Order on Consent. The parties agree to work cooperatively
29 to successfully receive EPA and DTSC approval that Seaside is the formal Successor to
30 execute an AOC upon review of terms and conditions.
31

32 12. Amendment. This Agreement or any provision hereof may be changed,
33 waived, or terminated only by a statement in writing signed by the Party against which
34 such change, waiver or termination is sought to be enforced.
35

36 13. No Waiver. No delay in enforcing or failing to enforce any right under this
37 Agreement will constitute a waiver of such right. No waiver of any default under this
38 Agreement will operate as a waiver of any other default or of the same default on a future
39 occasion.
40

41 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or
42 conditions of this Agreement are to any extent declared invalid, unenforceable, void or
43 voidable for any reason whatsoever by a court of competent jurisdiction, the finding or
44 order or decree of which becomes final, the Parties agree to amend the terms in a
45 reasonable manner to achieve the intention of the Parties without invalidity. If the terms
46 cannot be amended, the invalidity of one or several terms will not affect the validity of the
47 Agreement as a whole, unless the invalid terms are of such essential importance to this

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1 Agreement that it can be reasonably assumed that the Parties would not have contracted
2 this Agreement without the invalid terms. In such case, the Party affected may terminate
3 this Agreement by written notice to the other Party without prejudice to the affected Party's
4 rights in law or equity.

5
6 15. Entire Agreement. This Agreement is intended by the Parties as a final
7 expression of their agreement and is intended as a complete and exclusive statement of
8 the terms and conditions thereof. Acceptance of or acquiescence in a course of
9 performance rendered under this Agreement shall not be relevant to determine the
10 meaning of this Agreement even though the accepting or acquiescing Party had
11 knowledge of the nature of the performance and opportunity for objection.

12
13 16. Choice of Law. This Agreement will be construed in accordance with the
14 laws of the State of California.

15
16 17. Further Assurances. Each Party agrees to execute and deliver all further
17 instruments and documents and take all further action that may be reasonably necessary
18 to complete performance of its obligations hereunder and otherwise to effectuate the
19 purposes and intent of this Agreement.

20
21 18. Headings. The headings of the sections hereof are inserted for convenience
22 only and shall not be deemed a part of this Agreement.

23
24 19. Notices. Any notice, demand, offer, or other written instrument required or
25 permitted to be given pursuant to this Agreement shall be acknowledged by the Party
26 giving such notice, and shall to the extent reasonably practicable be sent by hand
27 delivery, and if not reasonably practicable to send by hand delivery, then by telecopy,
28 overnight courier, electronic mail, or registered mail, in each case to the other Party at the
29 address for such Party set forth below (Note: A Party may change its place of notice by a
30 notice sent to all other Parties in compliance with this section):

31
32 City of Seaside
33 Attn: City Manager
34 440 Harcourt Avenue
35 Seaside, CA 93955

36
37 Fort Ord Reuse Authority
38 Attn: Executive Officer
39 920 2nd Avenue, Suite A
40 Marina, CA 93933

41 w/ an email copy to cityattorney@ci.seaside.ca.us

42
43 20. Term of Agreement: This Agreement shall be effective on the Effective Date
44 specified at the beginning of the Agreement and shall remain in effect unless and until
45 terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort
46 Ord Reuse Authority, provided, however, that this Agreement shall survive as to the
47 Grantees who are third party beneficiaries of this Agreement as set forth in paragraph 22,
for so long as Seaside remains the successor LRA.

48
49 21. Authorization. Each party affirms that it is fully authorized to enter into this
50 Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to


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1 review and approval of documents by the Seaside City Attorney, to enter into the terms
2 and conditions of this Agreement, the AOC and the ESCA and sign related ESCA and
3 AOC reporting and financial documents.
4

5 22. Third-Party Rights. The Grantees are intended to be third-party
6 beneficiaries of this Agreement as it relates to future transfers of property, water rights,
7 and wastewater discharge rights pursuant to the EDC Agreement, and shall have the right
8 to enforce the provisions hereof as if they were direct parties hereto. Nothing in this
9 Agreement is intended to confer upon any individual or entity, other than the Parties and
10 the above-identified third-party beneficiaries, any rights or remedies whatsoever.
11

12
13 **IN WITNESS WHEREOF**, each Party has executed the Agreement with the
14 approval of its governing body as of the date first written above.
15

16
17 **CITY OF SEASIDE:**

18
19 
20 _____

21 Craig Malin
22 City Manager

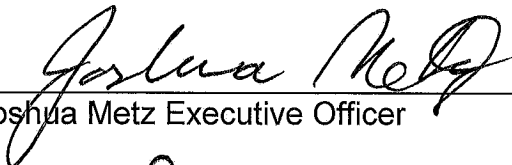
Date: 2/21/20

23
24 **APPROVED AS TO FORM:**

25
26 
27 _____

28 CITY ATTORNEY

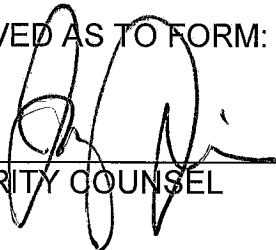
29
30
31 **FORT ORD REUSE AUTHORITY:**

32
33 
34 _____

35 Joshua Metz Executive Officer

Date: 2/21/20

36
37 **APPROVED AS TO FORM:**

38
39 
40 _____

41 AUTHORITY COUNSEL

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EXHIBIT A

Current Water Allocations & Percentage-based Allocations of Future Army Water*

	Current Water Allocations in Acre Feet	Allocation of Future Army Water Based on Percentage of Current Water Allocation
City of Marina	1340	29%
City of Monterey	65	1%
City of Seaside	1012.5	22%
County of Monterey	720	15%
CSUMB	1035	22%
City of Del Rey Oaks	242.5	5%
CA State Parks	44.5	1%
UCMBEST	230	5%

9 *In the unlikely event of availability of additional water from the US Army it would be
10 distributed following the percentage-based allocation provided above. These allocations
11 reflect previously agreed upon water distribution as per FORA Board Resolution No. 07-1
12 (potable water), and are consistent with the Marina Coast Water District Urban Water
13 Management Plan (2105). They also incorporate the Memorandum of Understanding
14 between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-
15 feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of
16 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20,
17 2017).